

REMARKS

The present Communication is in response to the Official Action mailed May 28, 2008. In the Action, claims 1-25 ("the currently pending claims") were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,440,133 to Beale et al. ("Beale"). These rejections were put forth by the Examiner even though she had previously indicated the allowability of certain of the claims. Likewise, these rejections were put forth even though Applicants appear to have overcome certain previously cited prior art reference(s). Applicants disagree with these new rejections, in particular, the Examiner's citation of Beale. This will be discussed below.

In the Action, the Examiner first noted the Declaration provided to the Examiner on April 17, 2007 under 37 C.F.R. 1.131 ("the Original Declaration"), which was originally submitted in connection with the parent case to the present matter, U.S. Patent No. 6,660,006 ("the '006 Patent"). During prosecution of the '006 patent, the Beale reference was similarly cited. However, the Original Declaration was submitted in order to allow Applicants to "swear behind" such reference. In the outstanding Action, the Examiner has noted the Original Declaration as ineffective because such does not provide any evidence as to whether the work on the present invention was done in this country, or in a NAFTA or WTO country. Accompanying the present Communication is a Supplemental Declaration under 37 C.F.R. 1.131 of one of the two named inventors of the present case, Yves Crozet. In this Supplemental Declaration, Mr. Crozet acknowledges the Original Declaration and "attest[s] to the fact that all inventive steps, including the conception and reduction to practice, of the invention of the present application and the '006 Patent were conducted in the United States." See ¶ 4 of the Supplemental Declaration.

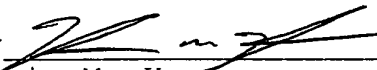
In light of the enclosed Supplemental Declaration, Applicants respectfully submit that the rejections in view of Beale are no longer proper. Simply put, Applicants have demonstrated the conception and reduction to practice of the present invention on a date prior to that of Beale. Therefore, Beale no longer qualifies as prior art and the rejections set forth in the outstanding Action should thusly be withdrawn. Applicants respectfully request that the present case be moved into a condition for allowance.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: August 28, 2008

Respectfully submitted,

By 
Kevin M. Kocun
Registration No.: 54,230
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants